

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

PHILLIP DAVIE,

Plaintiff,

VS.

**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT,**

Defendant.

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**CIVIL ACTION NO.
SA-09-CA-0503-XR**

PLAINTIFF’S MOTION TO RESCIND MEDIATED AGREEMENT

Now comes Plaintiff Phillip Davie and requests to rescind the agreement signed at the mediation on February 28, 2011, for the reasons stated as follows:

1. Plaintiff filed two separate lawsuits against Defendant Northside Independent School District, which included claims of discrimination based on his disability of Bi-Polar Disorder.
2. Don Davie, Plaintiff’s father, advises: In March 2011, “we came close to losing Phillip.” In early March 2011, Plaintiff’s psychiatrist considered committing Plaintiff due to severe depression and multiple physical issues, based upon body chemistry. Plaintiff was in tremendous physical pain, very confused, and at high risk for strokes. Plaintiff has been very ill with headaches, fevers, sweats, stomach pain, and other issues. The medications Plaintiff had been on since November 2010 were not effective, leaving Plaintiff in a diminished mental and physical capacity. Instead of committing Plaintiff, Plaintiff had multiple sessions with different doctors to change his medications and several sessions in a health clinic to rebalance his body

chemistry. On Friday, May 29, 2011, Plaintiff was diagnosed with advanced stages of cancer. Plaintiff had surgery on Saturday, May 30, 2011, and is scheduled for chemotherapy.

3. To protect Plaintiff's privacy, Plaintiff has not submitted medical documentation with this motion and requests a hearing, at which the medical documentation may be provided to the Court.
4. The final documents resolving this case have not been signed by the parties. According to the document signed at the mediation, Defendant is to provide a neutral reference and a statement of its reasons Plaintiff was not eligible to return to work at the time of Plaintiff's resignation based upon Defendant's assessment of Plaintiff's job description and information received from Plaintiff's physician. On March 1, 2011, Plaintiff provided to Defendant a proposed version of the statement. On March 7, 2011, Defendant provided to Plaintiff a proposed release, but did not include the neutral reference or the statement. On March 15, 2011, Plaintiff provided his revisions to the proposed release. On April 7, 2011, Plaintiff followed-up with Defendant regarding the revisions. On April 11, 2011, Defendant accepted all Plaintiff's revisions, except one. On April 13, 2011, Plaintiff agreed to waive the one revision and requested a copy of the revised release with the two attachments. On April 26, 2011, Plaintiff followed-up with Defendant on the status of the documents. As of this date, Plaintiff has not been provided the final version of the release nor any version of the neutral reference and statement.
5. Plaintiff was not in the proper physical and mental medical condition at the time of the mediation to sign a binding contract regarding his lawsuits. Due to his incapacity

at the time of the mediation, Plaintiff moves to rescind the agreement signed at the mediation on February 28, 2011, and requests to proceed with the two filed lawsuits (SA-09-CA-0503-XR and SA-09-CA-0503-XR).

Wherefore, premises considered, Plaintiff moves to rescind the agreement signed at the mediation on February 28, 2011, due to his incapacity, and for such other and further relief to which he is entitled.

Respectfully submitted,

LAW OFFICES OF
GAUL AND DUMONT
924 Camaron Street
San Antonio, Texas 78212
(210) 225-0685
(210) 320-3445 - Fax

By: **/s/ Malinda A. Gaul**
MALINDA A. GAUL
State Bar #08239800
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 2011, I electronically filed the above and foregoing *Plaintiff's Motion to Rescind Mediated Agreement* with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

D. Craig Wood
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
100 N.E. Loop 410, #900
San Antonio, Texas 78216

/s/ Malinda A. Gaul
MALINDA A. GAUL

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**CIVIL ACTION NO.
SA-09-CA-0503-XR**

**ORDER GRANTING PLAINTIFF'S
MOTION TO RESCIND MEDIATED AGREEMENT**

Came on for consideration Plaintiff's Motion to Rescind Mediated Agreement and Defendant's response thereto. The Court having considered the motion and response finds it should be granted.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Rescind Mediated Agreement is GRANTED.

Signed this ____ day of _____, 2011.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE